Re H. SOMAPAH, DECD.; RAJINDER SINGH & ANOR. v. P. R. NAIDOO & ORS.

[O. C. J. (Taylor J.) March 21, 1955]

[Singapore — Civil Suit No. 242 of 1936]

Will and Trust — Trust to accumulate under a will held valid for 21 years from death of testator — Partial intestacy — Whether estate duty payable on death of next of kin should be borne by residuary estate.

This was an application by trustees for directions as to whether estate duty on a particular fund should be borne by the residuary estate. The testator had died in 1924 having devised land to trustees on trust *inter alia* to accumulate the income during certain lives and twenty one years, and then to distribute the whole estate. In previous proceedings it had been held that the trust to accumulate was valid only for twenty-one years from the death of the testator. There was therefore a partial intestacy and the income for the remainder of the period until distribution devolved on the next of kin who were the three children of the testator. They have since died and their shares of the income therefore devolved on their respective personal representatives and are subject to the debts due from their estates, including estate duty. These personal representatives contend that the proportion of the estate duty which is levied on the devolved income ought to be charged on the estate of the testator. The surviving beneficiaries under the will resist this claim.

Held: in this case there were in effect two distinct trusts with distinct sets of parties one arising under the will and the other on the intestacy and the beneficiaries under one of these trusts cannot shift the burden of estate duty from them to the beneficiaries under the other trust.

Cases referred to:—

(1) *Re Cowley's (Earl) Estate* (1898) 1 Q.B. 355; (1899) A.C. 198.

(2) *Re Alkaff Settlement* (1955) M.L.J.

APPLICATION.

Dr. C. H. Withers-Payne for the trustees.

C. H. Smith for income beneficiaries.

R. H. Green for corpus.

Cur. Adv. Vult.

Taylor J.: — This is an application by trustees for directions as to whether estate duty on a particular fund should be borne by the residuary estate.

The material facts are these. The testator died in 1924 having devised land to trustees on trust, *inter alia*, to accumulate the income during certain lives and twenty-one years, and then to distribute the whole estate. It was held that the trust to accumulate was valid only for twenty-one years from the death of the testator. There was therefore a partial intestacy and the income for the remainder of the period until distribution devolved on the next of kin who were the three children of the testator. They have since died and their shares of the income thereupon devolved on their respective legal personal representatives and are subject to the debts due from their estates, including estate duty.

These representatives contend that the proportion of the estate duty which is levied on the devolved income ought to be charged on the estate of the testator. The surviving beneficiaries under the will resist this claim.

The authorities cited range from *Earl Cowley's case*[1] in 1897 to the local case of the *Alkaff Settlement*[2], decided last December. All these relate to adjustments of duty as between different beneficiaries under the same trust. They are not applicable. This case is fundamentally different in the facts.

Here there are two distinct trusts with distinct sets of parties. In the first the testator was the settlor, the trust instrument is the will and the *cestuis que* trust are the legatees. When that trust partially failed the freed income vested in the Court as, in effect, the settlor of a separate trust; the trust instrument was the Statute of Distributions and the *cestuis que* trust were the next of kin at the date of the death of the testator. The two trust properties have a common origin but the trusts are separate.

There is analogy with the case where a testator creates a period trust of property including a house which he has leased for a term of which, twenty years have still to run. The executors are trustees for the lessee in the limited sense that they must perform the obligations of a lessor towards him for the balance of the term. The duty to perform these obligations arises from the will but the obligations themselves arise exclusively from the lease. The lessee is not a beneficiary. If he dies the executors may be called upon to give information to the Estate Duty Office but no one would suggest that any part of the duty on the lessee's estate could be shifted to them as the reversioners. The lessee might indeed be a member of the family and might be a beneficiary under the will but that would make no difference because the claim would be under a totally different right.

The present case may be less obvious but the principle is the same. The three children of the testator, who were the first beneficiaries of the fund in question, were also beneficiaries under his will but that was a coincidence. They claimed the fund in a different character and under a different instrument. The trustees are the same persons but they are trustees of two distinct funds, under two distinct dispositions, for two distinct sets of beneficiaries. Certain individuals are beneficiaries under both trusts but they cannot shift the burden of estate duty from one to the other.

Solicitors: *Drew & Napier; Donaldson & Burkinshaw; Braddell Bros.*